

CRAIG T. DELA CRUZ 5651
Regulated Industries Complaints
Office
Department of Commerce and Consumer
Affairs
235 South Beretania Street, 9th Floor
Honolulu, Hawaii 96813
Telephone: 586-2660

Attorney for Petitioner

BOARD OF NURSING
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the
License to Practice
Nursing of

LUCY M. KONO,

Respondent.

) RNS 2000-37-L
)
) FIRST AMENDED SETTLEMENT
) AGREEMENT PRIOR TO FILING
) OF PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL
) ORDER; EXHIBITS "1" - "3"
)
)

FIRST AMENDED SETTLEMENT AGREEMENT PRIOR TO FILING OF
PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

LUCY M. KONO, (hereinafter "Respondent") and the
Department of Commerce and Consumer Affairs, by and through its
Regulated Industries Complaints Office (hereinafter "RICO"),
enter into this Settlement Agreement as follows:

WHEREAS, RICO received a complaint alleging that
Respondent had engaged in professional misconduct, unethical
practices, and substance abuse by diverting narcotics for her own
use while employed at the Maui Memorial Medical Center;

WHEREAS, Respondent was at all times relevant herein
licensed by the Board to act as a nurse under License Number RN
35219;

DEPT. OF COMMERCE
& CONSUMER AFFAIRS

2004 DEC 17 A 10:24

RECEIVED

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION

2004 DEC 20 A 10:04

DEPT. OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

2005 JAN 11

A 11:38

WHEREAS, Respondent has been fully informed of the allegations which may be proven should this matter proceed to hearing;

WHEREAS, Respondent understands she is subject to penalties, including but not limited to, revocation or suspension of her license if the violations alleged are proven at hearing;

WHEREAS, Respondent enters into this Settlement Agreement represented by Philip H. Lowenthal, Lowenthal & August, 33 North Market Street, Suite 101, Wailuku, Maui, Hawaii 96793;

WHEREAS, all relevant acts herein occurred in the State of Hawaii;

WHEREAS, Respondent's current address is 221 Mahalani Street, Wailuku, Hawaii 96793;

WHEREAS, Respondent has been fully apprised of her right to a hearing pursuant to HRS Chapters 91 and 92, and has voluntarily elected to waive her right to a hearing;

WHEREAS, the Respondent has successfully completed the Maui Drug Court Program and graduated on February 28, 2002, a true and accurate copy of the certificate is attached as Exhibit "1";

WHEREAS, pursuant to Respondent's graduation, the Prosecutor's Office on Maui filed the Motion to Dismiss With Prejudice in Cr. No. 00-1-0643(2) on March 4, 2002, a true and accurate copy is attached as Exhibit "2";

WHEREAS, the Respondent resumed working at Maui Memorial Medical Center on June 18, 2001, after successfully

completing an outpatient substance abuse program, a true and accurate copy is attached as Exhibit "3";

WHEREAS, as part of Respondent's work agreement included participation in Maui Memorial Medical Center's peer assistance program from June 18, 2001 to June 18, 2003. Requirements of the Maui Medical Memorial Center's peer assistance program includes scheduled monitoring sessions with the Employee Health Nurse, verification of attending a minimum of two 12 step meetings per week and complying with random drug screening. Respondent shall cooperate with the Board and RICO by providing any information concerning her work status or place of employment upon request;

WHEREAS, the parties hereto desire to settle this matter without a hearing;

NOW, THEREFORE, RICO and Respondent agree, subject to the approval and order of the Board of Nursing (hereinafter "Board"), that:

1. Jurisdiction. The Board has jurisdiction over the subject matter herein and over the parties hereto.

2. Waiver of right to hearing. Pursuant to §91-9(d), HRS, Respondent voluntarily waives her right to a hearing and agrees to a disposition of this case pursuant to the terms and conditions of this Settlement Agreement.

3. No coercion or duress. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress. Respondent acknowledges that she is fully

aware that in so doing she is subject to disciplinary sanctions pursuant to the terms herein.

4. Administrative Fine. Respondent agrees to pay a civil penalty of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) via cashier's check or money order made payable to the "DCCA Compliance Resolution Fund" and delivered via certified mail to the Regulated Industries Complaints Office, 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813 within thirty (30) days from the approval of this Settlement Agreement by the Board.

5. Failure to abide by terms of this Agreement. In the event that Respondent fails to abide by any of the terms of the Settlement Agreement, Respondent agrees to the revocation of her license without further hearing, upon the Board's receipt of an Affidavit from RICO attesting to any such violation and/or failure by Respondent. Upon the revocation of Respondent's license, Respondent understands that she shall not apply for a license for a period of five (5) years. If Respondent's license is revoked, Respondent shall turn in all indicia of her licensure to the Executive Officer of the Board within five (5) days after receipt of notice that her license has been revoked.

6. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of nurses in the State of

Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

7. Approval of the Board. Respondent is aware that this Settlement Agreement shall not become binding upon any of the parties hereto unless and until it is approved by the Board.

8. No objection if Board fails to approve. If the Board does not approve the Settlement Agreement, does not issue an order pursuant thereto or does not approve a lesser and/or alternative remedy and instead requires that this matter be presented for administrative hearing before a hearings officer of the Department of Commerce and Consumer Affairs in accordance with HRS Chapters 91 and 92, Respondent agrees that she will not raise any objection on any administrative and/or adjudicatory level on the basis that the Board has become disqualified to consider this case because of its review and consideration of the Settlement Agreement.

9. Ambiguities, if any, shall be construed to protect the consuming public. The language and terms of this Agreement are the product of negotiation between the parties hereto and/or their attorneys and the rule that ambiguities shall be construed against the drafter of this Agreement does not apply. The parties did not intend to use ambiguous language, but if any ambiguities exist, they should be construed against the parties in the manner which most completely protects the interest of the consuming public.

10. No reliance upon representations of RICO. Other

than the matters specifically stated in this Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Agreement, and Respondent is not relying upon any statement, representations, opinions or promises made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Agreement or concerning any other matter or thing.

11. Complete Agreement. This Settlement Agreement:

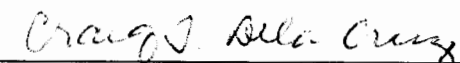
- a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto;
- b) contains the entire agreement of the parties; and
- c) may only be modified, changed or amended by written instrument duly executed by all parties hereto.

DATED: Wailuku, Hawaii, December 13, 2004.



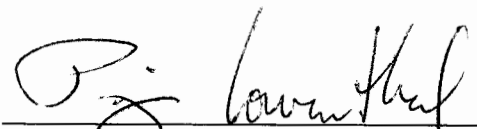
LUCY M. KONO
Respondent

DATED: Honolulu, Hawaii, December 16, 2004.



CRAIG T. DELA CRUZ
Attorney for Petitioner

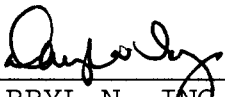
APPROVED AS TO FORM:



PHILIP H. LOWENTHAL
Attorney for Respondent

IN THE MATTER OF THE LICENSE TO PRACTICE NURSING OF LUCY M. KONO; FIRST AMENDED
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION
AND BOARD'S FINAL ORDER; RNS 2000-37-L


APPROVED AND SO ORDERED:
BOARD OF NURSING
State of Hawaii



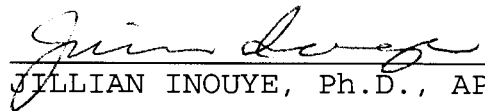
DARRYL N. INOUE, MBA
Chairperson

1/7/05

DATE



KATHARYN F. DAUB, Ed.D., RN
Vice Chairperson



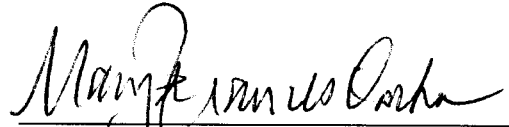
JILLIAN INOUE, Ph.D., APRN

JOANNE ITANO, Ph.D., APRN

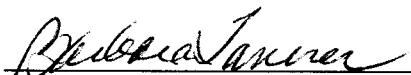


STEPHEN A. KULA, Ph.D., NHA

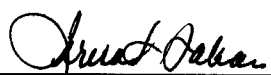
BENJAMIN MERCADO, LPN



MARY FRANCES ONEHA,
Ph.D., APRN



BARBARA TANNER, MSN, APRN



TERESA SAKAI, RN

STATE OF HAWAII

)

SS.

COUNTY OF MAUI

)

On this 13th day of December, 2004, before me personally appeared LUCY M. KONO, to me known to be the person described, and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

✓
Melinda Sistar
NAME: Melinda Sistar
Notary Public, State of Hawaii

My commission expires: 8/1/2007

Having successfully completed the

Maui Drug Court Program

And upon recommendation of the

Circuit Court of the Second Circuit

and

Impact Drug and Alcohol Treatment Center

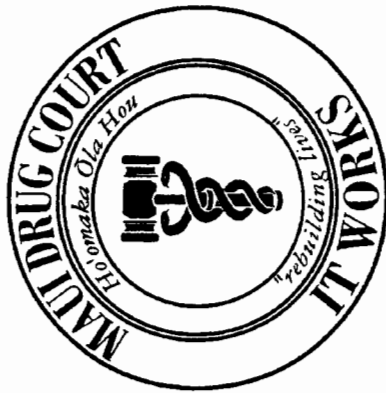
this

Certificate of Completion

is awarded to

Lucy Kono

EXHIBIT



Signed at Wailuku, Maui, Hawaii, on the Twenty-Eighth Day of February 2002

[Signature]
Honorable Shackely F. Raffetto, Chief Judge
Second Circuit Court, State of Hawaii

[Signature]
David K. Ramage, Director
Impact Drug and Alcohol Treatment Center

EXHIBIT 2

FILED

DEPARTMENT OF THE PROSECUTING ATTORNEY 207

MARK R. SIMONDS 5187
Deputy Prosecuting Attorney
County of Maui
Wailuku, Maui, Hawaii 96793

Tel. No. 270-7630

Attorney for the State of Hawaii

2002 MAR -4 AM 8:19

J. KAYA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

STATE OF HAWAII

v.

LUCY KONO,

Defendant.

CR. NO. 00-1-0643 (2)

COUNT ONE: PROMOTING A
DANGEROUS DRUG IN THE THIRD
DEGREE

COUNT TWO: FRAUDULENT
OBTAINING OF A CONTROLLED
SUBSTANCE

COUNT THREE: PROMOTING A
DANGEROUS DRUG IN THE THIRD
DEGREE

COUNT FOUR: PROHIBITED ACTS
RELATED TO DRUG PARAPHERNALIA

COUNT FIVE: PROMOTING A
DANGEROUS DRUG IN THE FOURTH
DEGREE

COUNT SIX: PROMOTING A
HARMFUL DRUG IN THE FOURTH
DEGREE

MOTION TO DISMISS WITH
PREJUDICE; ORDER

MOTION TO DISMISS WITH PREJUDICE

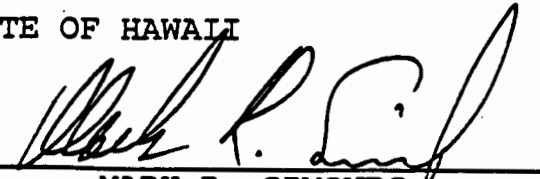
Comes now the State of Hawaii, by and through
MARK R. SIMONDS, Deputy Prosecuting Attorney for the County of
Maui, and hereby moves this Honorable Court for an order

dismissing the above-entitled matter with prejudice, pursuant to Defendant's successful completion in the Maui Drug Court Program.

DATED: Wailuku, Hawaii, February 28, 2002.

STATE OF HAWAII

By



MARK R. SIMONDS
Deputy Prosecuting Attorney
County of Maui

APPROVED AND SO ORDERED:

/s/ Shackley F. Raffetto (Seal)

Judge of the above-entitled Court



Maui Memorial
MEDICAL CENTER

Hawaii Health Systems Corporation — Maui Region

April 17, 2002

Mr. Phil H. Lowenthal
Attorney at Law
33 North Market Street, Suite 101
Wailuku, Hawaii 96793

Dear Mr. Lowenthal,

Re: Lucy Kono

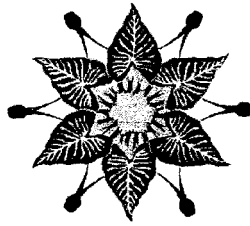
Ms. Kono returned to work at Maui Memorial Medical Center on June 18, 2001 on a full time basis in the Performance Improvement Department. She has been an exemplary employee exceeding our expectations. She is very professional, punctual and knowledgeable. Her attitude in the workplace has assisted us greatly gathering data, doing focus studies, meeting with physicians and reviewing charts.

Presently she has been entrusted to cover for the manager of the department during their absence. I feel that Lucy has demonstrated her professionalism and desire to perform. We need more people like her at our facility and I appreciate the opportunity to speak on her behalf.

Thank you very much,

Karen Oura
Director of Nursing

EXHIBIT 3



Maui Memorial
MEDICAL CENTER

Hawaii Health Systems Corporation—Maui Region

Date: April 11, 2002

To: Whom it may concern

RE: Lucy Kono RN

Lucy Kono resumed working at Maui Memorial Medical Center on June 18, 2001, after successfully completing an outpatient substance abuse program. One of her return to work agreement included participation in Maui Memorial Medical Center's peer assistance program from June 18, 2001 to June 18, 2003. Requirements of the Maui Memorial Medical Center's peer assistance program includes scheduled monitoring sessions with the Employee Health Nurse, verification of attending a minimum of two 12 step meetings per week and complying with random drug screening.

In January 2002, Lucy graduated from Maui Drug Court. She has kept all of her scheduled monitoring sessions with me and have fulfilled all of the requirements of Maui Memorial Medical Center's Peer Assistance Program. She will continue to be monitored by Employee Health till June 18, 2003.

If you require further assistance, do not hesitate to contact me at 242-2266.
Thank you.

Sincerely yours,

Ann S. Nouchi MS, RN
Maui Memorial Medical Center Employee Health